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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: OCT 3 2000
EAC 00 076 52428

IN RE: Petitioner:
Beneficiary: [redacted]

Public Copy

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Nigeria who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) has resided in the United States with the citizen or lawful permanent resident spouse; (2) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (3) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child; and (4) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner and her spouse lived together in their rented apartment from the date of their marriage until February 20, 1999 when they separated. He states that the petitioner's husband abandoned home when the parties could not patch up their differences due to the frequent and persistent incident of abuses which the petitioner was exposed to in the home, and that the spouse has since avoided the petitioner. He further states that the petitioner has provided documents to support the fact that her marital relationship with her husband was entered into in good faith. Counsel further asserts that the petitioner made an error of judgment by refraining from recording the incidents of abuse in court records or calling the police to make arrests or pulling a restraining order on him whenever he was physically or emotionally traumatized. He states that the petitioner has provided sworn affidavits from friends and relatives who were witnesses and had first-hand knowledge of the incidents of abuse and emotional trauma she was subjected to.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;

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(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as a visitor on July 19, 1997. The petitioner married her United States citizen spouse on October 10, 1997 at Boston, Massachusetts. On January 10, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(D) requires the petitioner to establish that she has resided in the United States with her U.S. citizen spouse.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on February 1, 2000. That discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner resided in the United States with her spouse, the director denied the petition.

On appeal, counsel asserts that the petitioner provided her joint tax returns, her insurance policy naming her husband as the primary beneficiary, and also her lease agreement to support the fact that the petitioner and her spouse lived together in their rented

apartment from the date of their marriage until February 20, 1999 when they separated.

Based on the documents in the record listing both parties as having the same address, it is reasonable to conclude that the petitioner and her spouse had resided together in the United States. The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(D).

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other

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court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on February 1, 2000 to submit additional evidence. The director listed examples of evidence she may submit to establish extreme cruelty. In his decision, the director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. He noted, however, that while the petitioner claimed in her statement that she was mentally and physically abused, she did not give any credible examples of extreme mental cruelty or physical abuse. He further noted that while the affiants state in their affidavits that the petitioner was abused, the affiants did not clearly state how they were aware of the claimed abuse.

On appeal, counsel asserts that the petitioner was subjected to extreme cruelty and abuse by her spouse through verbal abuses, emotional abuses, and physical abuses. He states that the husband would beat her; force her to have sex with him when he was drunk; threaten to leave home if she does not give him money; and he would vacate the home for several days on drinking binges whenever he received money from his occupation as a hair stylist or barber. Counsel further states that the petitioner has provided sworn affidavits from friends and relatives who were witnesses and had first-hand knowledge of the incidents of abuse and emotional trauma she was subjected to.

As indicated above, the director reviewed these affidavits and determined that the affiants did not clearly state how they were aware of the claimed abuse. It is further noted that the affiants failed to establish that they are eye-witnesses to the abuse and knew sufficient details regarding any incidents of abuse or extreme cruelty. Neither the petitioner nor the affiants described the incidents leading to the abuse and the extent of the abuse inflicted on the petitioner. The relationship described by the

affiants reflects what would be considered a troubled or deteriorating marital relationship but does not constitute qualifying abuse.

The evidence provided in the present case does not suggest that the marital difficulties claimed by the petitioner were beyond those encountered in many marriages. Further, the record contains no evidence that the marital difficulties were compounded by any effort on the part of the citizen spouse to control the petitioner with threats regarding her immigration status as claimed by counsel. Rather, the record indicates that the citizen spouse merely abandoned the marital relationship. "Abandonment," however, is not included in, nor does it meet, the definition of qualifying abuse as provided in 8 C.F.R. 204.2(c)(1)(vi).

Based on the evidence in the record, it is concluded that the petitioner has failed to establish that she was battered by or was the subject of "extreme cruelty" as contemplated by Congress and as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

Because the petitioner furnished no evidence to establish that her removal to Nigeria would be an extreme hardship to herself or to her child, the petitioner was requested on February 1, 2000, to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme hardship. No additional evidence was furnished, nor did the petitioner address the director's request for evidence.

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On appeal, counsel asserts that removal would result in extreme hardship to the petitioner who has lived in this country consistently since 1997 and she would be exposed to hard living conditions of her native country. He further asserts that during her stay here, the petitioner has made her life comfortable, she has made a lot of friends, and she has accepted the United States as her permanent home. He claims that a return of the petitioner to Nigeria would be a reversion of these expectations and her dreams, which could have severe traumatic impact on her life.

Readjustment to life in the native country after having spent a number of years in the United States, however, is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Moreover, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment, and the fact that economic opportunities are better in the United States than in the alien's homeland do not constitute extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977). Furthermore, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996).

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal from the United States would result in extreme hardship to herself.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on February 1, 2000. That discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish good-faith marriage, the director denied the petition.

On appeal, counsel asserts that the petitioner provided her lease agreement, joint tax returns for the years 1997 and 1998, and an insurance policy naming her husband as the primary beneficiary in the event of an accidental death. He states that this was done in good faith and with the love and responsibility of a wife who felt she owed a duty to her husband.

The director, however, reviewed and discussed the evidence furnished and noted that there was no evidence that the tax returns were ever filed with the Internal Revenue Service, and that by her own admission, the petitioner's life insurance policy was discontinued. It is further noted that counsel, in his letter dated January 6, 2000, states that the petitioner's husband "made her to take life insurance policy with her as the insured and her husband as the primary beneficiary. She was required to pay the premium on this policy every month till the policy lapsed due to her inability to continue the payment of the premium."

"Being made" to buy, instead of voluntarily buying, life insurance diminishes the credibility of the petitioner's claim of good-faith marriage. Further, the petitioner, on appeal, failed to establish that the joint tax returns were filed with the Internal Revenue Service as noted by the director, or that the joint bank account and the copy of a completed Form I-130 are sufficient evidence to establish that her marriage to her spouse was entered in good faith.

However, while it appears from the evidence furnished that the petitioner and her spouse may have previously resided together as claimed, she has failed to establish that she entered into the marriage to the U.S. citizen in good faith. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.